

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LIBERTY LINCOLN-MERCURY INC.,
et al.,

Plaintiffs,

vs.

FORD MOTOR COMPANY,

Defendant.

Civ. No. 02-4146(WGB)

M E M O R A N D U M
O P I N I O N

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BASSLER, SENIOR DISTRICT JUDGE:

Ford Motor Company ("Ford") applies a surcharge to the wholesale automobile prices it charges its dealers. Fifty-eight

New Jersey Ford and Lincoln-Mercury automobile dealers have sued Ford for implementing this surcharge on the basis that the surcharge violates the New Jersey Franchise Practices Act ("NJFPA").¹ The NJFPA provides that a motor vehicle franchisor "shall reimburse" its franchisee for parts used in warranty repairs at the franchisee's "prevailing retail price," provided that the retail price is "not unreasonable." N.J.S.A. § 56:10-15(a). Ford claims that the surcharge is a legal recovery of the costs Ford incurs for complying with the NJFPA and moves for partial summary judgment. Plaintiffs cross-move for partial summary judgment.

For the reasons below, this Court **grants** Plaintiffs' motion for partial summary judgment on Count One and **denies** Plaintiffs' motion for partial summary judgment on Counts Two, Three, Five, Six and Nine. The Court further **denies** Ford's motion for partial summary judgment on Count One and **grants** Ford's motion for partial summary judgment on Counts Two, Three and Five through

¹Plaintiffs 12 count complaint alleges claims for (Count 1) violation of the NJFPA, N.J.S.A. 56:10-15, (Count 2) violation of the NJFPA, N.J.S.A. 56:10-7, (Count 3) violation of the Automobile Dealer's Day in Court Act, (Count 4) violation of the Robinson Patman Act, (Count 5) breach of contract, (Count 6) breach of implied covenant of good faith and fair dealing, (Count 7) unjust enrichment and conversion, (Count 8) estoppel, (Count 9) quantum meruit, (Count 10) wrongful manipulative accounting and demand for accounting, (Count 11) accounting misrepresentation, (Count 12) unconscionability.

Twelve.²

The Court has jurisdiction over this matter under 28 U.S.C. § 1337 and 28 U.S.C. § 1331 for Ford's alleged violations of the Robinson-Patman Act and the Automobile Dealer's Day in Court Act and supplemental jurisdiction under 28 U.S.C. § 1367. Venue also is proper pursuant to 28 U.S.C. § 1391(c).

I. BACKGROUND

Ford manufactures motor vehicles, which are sold to a nationwide network of independent franchised dealers. Every new Ford brand vehicle is accompanied by a new vehicle limited warranty. The warranty provides that Ford will effect the repair or replacement of vehicle components under certain circumstances and with certain time and mileage limitations. Ford will also effect a repair when a part used in a prior service repair, paid either by Ford or the vehicle owner, fails during that part's express, limited warranty period or the vehicle's limited warranty period, whichever is longer. A consumer may also purchase an extended service plan ("ESP") which covers the vehicle beyond the basic warranty.

As part of their Agreement with Ford, franchised dealers must perform warranty work for purchasers of Ford brand vehicles, regardless of whether the individual dealer sold the vehicle in

²The only count that neither party seeks partial summary judgment on is Count Four (Violation of the Robinson Patman Act).

question to the customer. Ford reimburses the dealers for limited warranty or ESP warranty repairs and for work that must be performed on Ford vehicles that are recalled. Ford also voluntarily pays a portion of non-warranty repair work done to maintain customer satisfaction, known as goodwill.

When parts are used by a dealer in performing warranty work in most states, Ford reimburses the dealer for the dealer's cost of those parts, plus a standard national mark-up of 40% for most parts. Therefore, the standard reimbursement amount is 140% of dealer costs.

In New Jersey, however, the NJFPA provides that a "motor vehicle franchisor shall reimburse" its franchisee for parts used in warranty repairs at the franchisee's "prevailing retail price," provided that the retail price is not unreasonable. N.J.S.A. § 56:10-15(a).³ On June 1, 2002, Ford implemented a

³N.J.S.A. § 56:10-15(a) fully provides that:

If any motor vehicle franchise shall require or permit motor vehicle franchisees to perform services or provide parts in satisfaction of a warranty issued by the motor vehicle franchisor . . . [t]he motor vehicle franchisor shall reimburse each motor vehicle franchisee . . . and such parts as are supplied, in an amount equal to the prevailing retail price charged by such motor vehicle franchisee for such . . . parts in circumstances where . . . such parts [are] supplied other than pursuant to the warranty; provided that such motor vehicle franchisee's prevailing retail price is not unreasonable when compared with that of [other franchisees] from the same motor vehicle franchisor for identical merchandise . . . in the geographic area in which the motor vehicle franchisee is engaged in

surcharge in New Jersey to recover the costs of complying with the warranty reimbursement requirements of the NJFPA. Ford claims that this surcharge is distinct from the surcharge-known as the dealer parity surcharge-that Ford had imposed solely on Liberty Lincoln Mercury, Inc. ("Liberty") in 1992, which had resulted in litigation and was deemed violative of the NJFPA by the Third Circuit Court of Appeals.

A. Dealer Parity Surcharge

In 1991, Liberty wrote to Ford asking to be reimbursed for warranty parts at its retail rate of 77% above costs pursuant to the NJFPA. Although Ford agreed to reimburse Liberty after several months of correspondence, Ford informed Liberty that it would apply a dealer parity surcharge ("DPS") to the wholesale price of each vehicle purchased by Liberty. The DPS was calculated by taking the incremental reimbursement cost of complying with the NJFPA (the difference between the 77% markup and defendant's standard 40% warranty parts markup) and dividing it by the total number of vehicles invoiced to Liberty.

In June 1995, Liberty filed a suit against Ford for imposing the DPS on Liberty after it sought Ford's compliance with the NJFPA. The New Jersey District Court ruled that Ford's practice was illegal as it effectively permitted Ford to circumvent the

business.

statute's requirements. The Third Circuit affirmed the District Court and agreed with the District Court's view that Ford was "engaged in a shell game, the purpose of which is to avoid, altogether, the costs of complying with the NJFPA." Liberty Lincoln-Mercury Inc. v. Ford Motor Co., 134 F.3d 557, 561 (3d Cir. 1998) ("Liberty") (citing Liberty Lincoln-Mercury Inc. v. Ford Motor Co., 923 F.Supp. 665, 669 (D.N.J. 1996)). The Court held that "in reducing Liberty to 'the same position as if it were reimbursed the standard thirty to forty percent above cost,' 923 F.Supp. At 669, the DPS scheme violated the 'clear language of the NJFPA' by denying Liberty reimbursement at its prevailing retail rate." Liberty, 134 F.3d at 566.

B. New Jersey Cost Surcharge

Under the current New Jersey Cost Surcharge ("NJC Surcharge"), Ford applied a statewide per vehicle surcharge to all vehicles purchased by New Jersey dealers for retail sale regardless of the total amount of warranty work performed by the dealer or the dealer's warranty parts reimbursement mark-up. The surcharge was derived by calculating Ford's projected total statewide incremental costs of future compliance with the NJFPA and then dividing that amount by the total number of anticipated vehicle sales to all New Jersey dealers. The initial NJC Surcharge was \$125, which Ford increased to \$157 on May 5, 2003 to more accurately reflect Ford's increased costs.

II. DISCUSSION

Plaintiffs argue that Ford's implementation of the NJC Surcharge is virtually indistinguishable from the DPS in the earlier Liberty case. Ford claims that not only are the DPS and NJC Surcharge different, but the NJC Surcharge is the type of surcharge that the Third Circuit expressly stated was acceptable. Ford notes that the Third Circuit held that the DPS "functioned not as a wholesale vehicle price term carried out through unregulated vehicle sales transactions, but rather as a warranty reimbursement policy that automatically eliminated any reimbursement beyond Ford's standard rate resulting . . . in no payment at retail." 134 F.3d at 564. (emphasis added). Ford claims that the NJC Surcharge, in contrast, is a "wholesale vehicle price term" because it is added to the wholesale price of each vehicle purchased by a New Jersey dealer. Ford admits, however, that this number is based upon the statewide incremental costs of future compliance with the NJFPA and can be adjusted to more accurately reflect Ford's actual costs.⁴

Ford further insists that the NJC Surcharge more closely resembles the surcharge that the First Circuit held did not violate Maine's warranty reimbursement statute. The First

⁴The calculation used to determine the NJC Surcharge is similar to the calculation used to ascertain the DPS except that total figures for all New Jersey dealers are used instead of figures for one particular dealer.

Circuit in Acadia v. Ford Motor Co., 44 F.3d 1050 (1st Cir. 1995), reversed the district court's ruling that it was improper for Ford to institute a \$160 warranty parity surcharge to recover the increased costs of complying with a Maine statute similar to the NJFPA.

The Maine statute required that Ford reimburse its dealers "at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty." 10 M.R.S.A. § 1176 (Supp. 1993).⁵ The court noted that it is "quite commonplace for manufacturers and other regulated entities to pass on to retailers and consumers their costs of complying with regulatory statutes." Acadia, 44 F.3d at 1056. Furthermore, the court held that nothing in the legislative history indicated, either expressly or implicitly, that warranty reimbursement costs could not be passed on by manufacturers to dealers, and then from dealers to consumers. Therefore, the court ruled that it could not reasonably or fairly infer, that the legislature intended to prohibit or condition manufacturer

⁵The Maine statute states:

If a motor vehicle franchisor requires or permits a motor vehicle franchisee to . . . provide parts in satisfaction of a warranty created by the franchisor, the franchisor . . . shall reimburse the franchisee for any parts so provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty.

cost recovery. Id. at 1056-57.

Although Ford correctly notes that the Acadia court ruled that Ford could recover its costs of doing business in Maine through wholesale price increases, the court's decision was based on its conclusion that the intent of the Maine statute was to protect non-warranty customers not dealers. 44 F.3d at 1057, n.9.⁶ Unlike the Maine statute, the NJFPA is a "remedial statute intended to equalize the disparity of bargaining power in franchisor-franchisee relationships." Liberty, 134 F.3d at 566.

Both parties agree that there are no genuine issues of material fact and correctly note that this action rests on the interpretation of previous case law. Ford's Reply Memorandum in

⁶As Plaintiffs point out, the Acadia court apparently was wrong in their assessment that the Maine statute did not intend to protect dealers. Plaintiffs' Opposition Memorandum (Pls. Opp.) at 14. After the Acadia ruling, the Maine Legislature amended the statute to provide in relevant part that: "A franchisor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section." L.D. 1294 § 10, 121st Leg., 1st Reg. Sess. (Me. 2003). Contrary to Ford's contention (See Ford's Reply Memorandum in Support of Partial Summary Judgment ("Ford's Rep. Mem.") at 3, n.5) that this statute has yet to be deemed constitutional (in all fairness to Ford, after it made this statement), the First Circuit ruled that the statute was constitutional and did not violate the Commerce Clause or the Contracts Clause. Alliance of Automobile Manufacturers v. Gwadosky, 430 F.3d 30 (1st Cir. 2005). Additionally, the court held that the purpose of the statute was to prevent an unfair price differential between warranty and non-warranty repair that the Maine legislature reasonably viewed as detrimental to consumers and motor vehicle dealers alike. Id. at 38. The court further held that Ford's actions revealed the existence of a loophole in the retail-rate reimbursement provision that the recoupment bar was designed to plug. Id.

Support of Partial Summary Judgment ("Ford Rep. Mem.") at 2; see also Plaintiffs' Opposition Memorandum ("Pls. Opp. Mem.") at 6. The Court finds that even more important is how the interpretation of N.J.S.A. 56:10-15(a) impacts this case, as no court has been faced with the exact set of facts that are at issue here.

A. Statutory Interpretation

The primary goal of a court in interpreting a statute is to discern and give effect to the legislative intent in light of the language used and the objects the legislature sought to achieve by enacting the statute. Burns v. Belafsky, 166 N.J. 466, 473 (2001)(citing State v. Hoffman, 149 N.J. 564, 578 (1997)). The search of legislative intent begins with the language of the statute. First Resolution Inv. Corp. v. Seker, 171 N.J. 502, 511 (2002). "If the statute is clear and unambiguous on its face and admits of only one interpretation, we need delve no deeper than the act's literal terms to divine the Legislature's intent." State v. Thomas, 166 N.J. 560, 567 (2001)(quoting State v. Butler, 89 N.J. 220, 226 (1982)). Only when the language of the statute is ambiguous should courts look beyond the words of the statute to its history, policy or other extrinsic aids to ascertain statutory intent. Cedar Cove, Inc. v. Stanzione, 122 N.J. 202, 213 (1991).

NJFPA, N.J.S.A. 56:10-15 (Count One)

Under New Jersey law, remedial statutes, like the NJFPA, must be construed broadly to give effect to their legislative purpose. Lemelledo v. Beneficial Mgmt. Corp. of America, 289 N.J. Super. 489, 674 A.2d 582, 585 (1996). Although Ford argued in the Liberty case that nothing in the plain language of the statute prohibited Ford from recouping the costs of complying with the NJFPA, the Circuit Court rejected its argument. 134 F.3d at 567. The Court held that "the DPS, by automatically reducing Liberty's reimbursements below-retail rates, violates NJFPA's clear mandate that the franchisor 'shall reimburse' the franchisee for warranty parts 'in an amount equal to the prevailing retail price.'" Liberty, 134 F.3d at 565 (citing N.J.S.A. § 56:10-15(a)).

Based on Ford's current surcharge, no dealer will be reimbursed for warranty parts at the prevailing retail rate because the amount that the dealer would receive pursuant to N.J.S.A. 56:10-15(a) is reduced by the NJC Surcharge. Ford, on the other hand, recovers all of the money that it incurs as a result of the statute and clearly has stated that the surcharge will be adjusted to reflect any inaccuracies in the amount that it should recover.⁷ The Court finds that-as the Third Circuit

⁷Ford adjusted the surcharge less than one year after it instituted the surcharge to reflect warranty reimbursement amounts that it was not able to recover from the original

held in Liberty-it cannot be the case that the "[franchisee-dealers]-the class of intended beneficiaries-bear the entire burden." 134 F.3d at 568. Such a result would be unfair and contravenes the purpose of the NJFPA.

Ford asserts, however, that the NJC Surcharge fits into one of the hypothetical situations in which the Third Circuit and District Court in Liberty intimated might be an acceptable cost recovery system under the statute. 134 F.3d at 563 (the district court did not "forbid methods of cost recovery involving wholesale prices"); 923 F.Supp. at 669 ("This is not even a case in which all New Jersey Lincoln-Mercury dealers are subject to the same surcharge regime as a result of the NJFPA"). The Court finds, however, that Ford is still engaged in the type of "shell game," that the Third Circuit found was prohibited by the NJFPA.

The Court's position is supported by the legislative history of the statute, which states that the NJFPA "is designed to remove the franchisor's present opportunity to isolate himself from the warranty he issues." Legislative Statement, Assembly No. 1956 (May 24, 1976). Additionally, the NJFPA "offers protection to the competent retailer against arbitrary actions by manufacturers who too often hold a life-and-death power over his business and his ability to serve his customers." Id. The legislature clearly intended to provide dealers with

surcharge.

reimbursement of warranty parts at the "prevailing retail price." N.J.S.A. § 56:10-15(a).

The Court further rejects Ford's argument that the NJC Surcharge is an appropriate cost recovery system because regulated entities frequently pass statutory compliance costs on to retailers. The Court is just as unpersuaded by this argument as the Third Circuit, which ruled that "compliance costs which Ford shifted to Liberty were not incidental to compliance with an independent regulatory mandate, such as a vehicle safety standard or an environmental regulation, but rather were the very subject of the substantive regulation at issue." 134 F.3d at 567. The Court further stated that:

we agree with the district court that a construction of the NJFPA permitting machinations which ultimately fail to afford the dealer reimbursement for warranty parts at its retail rate would 'fly in the face of the intent of the New Jersey legislature . . . and would undermine the purpose of the Act.'

Id. (citing 923 F.Supp. at 669-70).

Ford cites to other statements made by the Third Circuit in Liberty to dispute these conclusions. For instance, Ford notes that the Liberty Court stated that "we agree with Acadia's holding that the statutes at issue do not preclude cost-recovery systems effected through wholesale vehicle price increases, but reject Ford's contention that the DPS constitutes such a system." The Court notes, however, that the Third Circuit was speaking in dicta and did not have the present facts before it to make a

ruling on this particular issue that would be binding on this Court.⁸ This Court finds that Ford's NJC Surcharge, like the DPS, violates the express language of the statute and frustrates its legislative purpose. Therefore, Plaintiffs partial summary judgment motion on Count One is granted.⁹

NJFPA, N.J.S.A. 56:10-7 (Count Two)

Section 56:10-7(e)¹⁰ of the NJFPA prohibits any franchisor from imposing unreasonable standards of performance on a franchisee. Similarly, Section 56:10-7.4(a) precludes a franchisor from imposing unreasonable standards of performance or unreasonable financial, operating or other requirements. By requiring Plaintiffs to pay a \$125 or \$157 Surcharge, Ford did not impose standards that were unreasonable. The surcharge does not constitute an unreasonable standard of performance merely because it violates the NJFPA as Plaintiffs suggest. Plaintiffs' Memorandum Supporting Partial Summary Judgment Motion ("Pls. Supp. Mem.") at 16.

⁸Moreover, the District Court in the Liberty case noted that the assumption that franchisor-manufacturers can recover compliance costs from franchisee-dealers "may not be correct." 923 F.Supp. at 665.

⁹Plaintiffs concede at oral argument on February 23, 2006 that Plaintiffs will get complete relief if they win on Count One and that all other claims merge. 2/23/06 Tr. at 23.

¹⁰This statute provides that "it shall be a violation of this act for any franchisor, directly or indirectly, through any officer, agent or employee, to . . . impose unreasonable standards of performance upon a franchisee."

In the few New Jersey federal district court cases addressing these two sections of the NJFPA, summary judgment was denied where a fact issue existed concerning whether unreasonable standards of performance were imposed on plaintiff. Carlo C. Gelardi Corp. v. Miller Brewing Co., 502 F.Supp. 637 (D.N.J. 1980) (fact issue existed regarding whether defendant's alleged conduct made plaintiff's life "sufficiently miserable" forcing plaintiff to quit distribution of defendant's product); see also Dunkin' Donuts Inc. v. Dough Boy Mgmt., Inc., 2006 WL 20521, slip op. at *11 (D.N.J. Jan. 3, 2006).

The District Court in New Jersey Coalition of Automotive Retailers v. DaimlerChrysler Motors Corp., 107 F. Supp. 2d 495 (D.N.J. 1999) ("NJCAR"), noted that the \$160 Surcharge Ford instituted to recoup costs imposed by the Maine reimbursement statute in Acadia was "considerably lower" than the \$400 Surcharge DaimlerChrysler threatened to charge its customers if they exercised their rights under the NJFPA. The Court held that the \$400 surcharge was not in line with the manufacturer's increased costs and therefore, constituted a penalty. Id. at 500. That is not the case here. Although the Court finds that the NJC Surcharge imposed by Ford is precluded by the NJFPA, the Court does not believe that a reasonable jury could find that the surcharge constituted an unreasonable standard of performance.

**B. The Automobile Dealer's Day in Court Act,
15 U.S.C. §§ 1221-1225 (Count Three)**

In order to sustain a claim under the Automobile Dealer's Day in Court Act ("ADDCA"), a plaintiff must prove a breach of the manufacturer's duty to act in "good faith." 15 U.S.C. § 1222. Good faith is defined as the "duty of each party to a franchise . . . to act in a fair and equitable manner . . . so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation." 15 U.S.C. § 1221(e). The type of coercion or intimidation rendered actionable under the ADDCA occurs only when the automobile manufacturer makes a "wrongful demand which will result in sanctions if not complied with." Cutrone v. Daimler-Chrysler Motors Co., LLC, No. 04-4259, 2005 WL 3487525, at *1 (3d Cir. Dec. 21, 2005) (citing Buono Sales, Inc. v. Chrysler Motors Corp., 449 F.2d 715, 724 (3d Cir. 1971)). Ford has not sought to coerce or intimidate Plaintiffs but has only sought to recover its increased costs for complying with the NJFPA. As the First Circuit in Acadia noted, it is commonplace for manufacturers to pass on to retailers and consumers their costs of complying with regulatory statutes. 44 F.3d at 1056. Furthermore, as discussed earlier, Ford attempted to develop a surcharge, which the Third Circuit in Liberty had intimated might be appropriate. See supra at 11. The Court does not find that Ford acted in bad faith by seeking to recover its cost of complying with the NJFPA.

C. Common Law Claims¹¹

Breach of Contract (Count Five)

Plaintiffs argue that Ford is in breach of the Sales and Service Agreement ("SSA") because 1) it unilaterally imposed the Surcharge without any additional consideration, 2) the SSA requires Ford to reimburse its dealers for warranty repairs and replacements, 3) the SSA prohibits inclusion of "charges for special items" in the dealer price, and 4) the SSA requires Ford to comply with all applicable federal and state law. Pls. Supp. Mem. at 21-24; Pls. Opp. Mem. at 27.

First, the SSA states only that Ford must reimburse dealers, and does not state the rate at which it must reimburse its dealers. Therefore, Ford's failure to reimburse dealers at the rate set by the N.J.S.A. 56:10-15(a) violates the statute, but does not breach the contract. See NJCAR, 107 F. Supp. 2d at 502 (provisions of the NJFPA are not incorporated into the franchise agreement). Furthermore, Paragraph 10 of the SSA expressly states that Ford reserves "the right at any time and from time to time to change or eliminate prices, charges, discounts, allowances, rebates, refunds or other terms of sales affecting

¹¹New Jersey gives effect to contracting parties' private choice of law clauses unless they conflict with New Jersey public policy. Stadium Chrysler Jeep v. DaimlerChrysler Motors Co., 324 F. Supp. 2d 587, 594 n.1 (D.N.J. 2004)(citing General Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 304 (3d Cir. 2001)). The Court does not find any conflict existing here; therefore, the Court will apply Michigan law.

COMPANY PRODUCTS." Certification of Christopher G. Massey ("Massey Cert.") at Ex. C. Although Plaintiffs have violated N.J.S.A. 56:10-15(a) by implementing the NJC Surcharge, they have not breached the express terms of the SSA.

Finally, Plaintiffs misinterpret the definition of "dealer price." The definition is meant to help the reader understand the term as it is used in the agreement. It expresses what is and is not included when the term "dealer price" is mentioned in the agreement; it does not preclude Ford from including a surcharge in its "price to dealers" as Plaintiffs suggest.

Covenant of Good Faith and Fair Dealing (Count Six)

As the Court discussed under the ADDCA, Plaintiffs have not proven that Ford failed to act in good faith by implementing the NJC Surcharge. See supra 16-17. Ford merely attempted to recover its cost for complying with the NJFPA, which was similar to the cost recovery system deemed appropriate in Acadia. Although Ford was wrong in its assessment that its method was not in violation of N.J.S.A. 56:10-15(a), Plaintiffs have not convinced the Court that Ford breached the covenant of good faith and fair dealing.

Unjust Enrichment and Conversion (Count Seven)

For a plaintiff to succeed on an unjust enrichment claim, she must prove that the defendant received a benefit, the retention of which would be unjust without payment. B & M Die

Co. v. Ford Motor Co., 167 Mich. App. 176 (1988). "Unjust enrichment works to imply a contract to prevent one party from inequitably receiving and retaining a benefit from another." Stadium Chrysler Jeep, L.L.C., 324 F. Supp. 2d at 595 (citing Kuhfeldt v. Liberty Mut. Ins. Co., 833 F.Supp. 632, 636 (E.D. Mich. 1993)). This form of implied contract, however, will only apply if no express contract between the parties exists. Like the theory of quantum meruit, the Court will not apply the unjust enrichment theory where a more adequate remedy exists under N.J.S.A. 56:10:15. See infra 15.

Estoppe (Count Eight)

Plaintiffs appear to argue that Ford is collaterally estopped from arguing this case because "the earlier Liberty case . . . necessarily decided Ford's liability [which was] . . . identical on all material facts." Pls. Opp. Mem. at 28. The Court disagrees. The facts of that case are significantly different from the present case, which has presented complex issues of law for the Court. Plaintiffs' attempt to characterize these cases as "identical" is fallacious.

Quantum Meruit (Count Nine)¹²

Plaintiffs claim that they should be entitled to recovery

¹²As only Ford has addressed whether New Jersey or Michigan law should apply to Plaintiffs' claim for quantum meruit and the Court has found no significant differences in the law, the Court will use Michigan law.

under the quasi-contractual theory of quantum meruit. Pls. Supp. Mem. at 28. Recovery in quantum meruit is based on the acceptance of a benefit by one party, and the inequity of allowing that party to retain the benefit without compensating the performing party. Gable v. Production Stamping, Inc., No. 230004, 2001 WL 951753, at *1 (Mich. Ct. App. Aug. 21, 2001). Quantum meruit, like unjust enrichment, is inappropriate where an express contract exists. Hull & Smith Horse Vans, Inc. v. Carras, 376 N.W.2d 392, 393 (Mich Ct. App. 1985).

Plaintiffs acknowledge that the SSA requires Ford to reimburse the dealer for warranty parts. Massey Cert. at Ex. C ¶ 4(b)(4). Plaintiffs do not and cannot contend that Ford provides no reimbursement for warranty parts but instead argue that they are underreimbursed based upon the amounts deemed appropriate under N.J.S.A. 56:10-15(a). The Court finds that resolution of this issue is more appropriately dealt with pursuant to NJFPA. Everett v. Nickola, 599 N.W.2d 732, 735 (Mich. Ct. App. 1999) (the equitable remedy of quantum meruit "is neither necessary nor appropriate where a resolution under the law is available.") Moreover, "[c]ourts are generally reluctant to create an implied-in-law contract except where justice demands it." Gable, 2001 WL 951753, at *2. As Plaintiffs have an adequate remedy at law, justice does not demand relief under the quantum meruit theory.

Accounting (Count Ten and Eleven)

As Plaintiffs concede, their accounting claims are pled "alternatively," in the event Plaintiffs do not prevail on Count One. Since the Court has ruled in favor of Plaintiffs on Count One, the Court grants Ford's partial summary judgment motion on these claims.

Unconscionability(Count Twelve)

Plaintiffs claim that the NJC Surcharge is unconscionable and "extortionate." Plaintiffs' Second Amended Complaint ¶¶ 179,181. As discussed above (supra at 15), the Court does not believe that the NJC Surcharge is excessive. Ford's attempt to recover its costs may violate the NJFPA, but Plaintiffs have failed to show that the NJC Surcharge is so unfair and unreasonable as to rise to the level of being unconscionable.

See Pack v. Damon Corp., 320 F.Supp. 2d 545, 556 (E.D. Mich. 2004). Ford's partial summary judgment motion on Count Twelve is therefore, granted.

II. CONCLUSION

For the reasons stated in this Opinion, this Court **grants** Plaintiffs motion for partial summary judgment on Count One, their claim that Ford's conduct violated 56:10-15(a), but denies the remainder of Plaintiffs' partial summary judgment motion on Counts Two, Three, Five, Six and Nine. The Court, **denies** Ford's motion for partial summary judgment on Count One, Plaintiffs'

claim that Ford violated 56:10-15(a), and grants its motion for partial summary judgment on Counts Two, Three and Five through Twelve. Therefore, the only count that remains in this action is Count Four, Plaintiffs' claim that the NJC Surcharge violates the Robinson Patman Act.

An appropriate Order accompanies this Opinion.

/s/ William G. Bassler
WILLIAM G. BASSLER, U.S.S.D.J.

Dated: March 30, 2006